FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FCP/165231

PRELIMINARY RECITALS

Pursuant to a petition filed April 08, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance (MA), specifically the Partnership Program, a telephonic hearing was held on June 09, 2015.

The issues for determination are whether the Partnership Program correctly denied petitioner's request for a new hospital bed and whether the FCP correctly denied petitioner's request for repairs to her current hospital bed.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Ann Seffernick, Program Manager, Partnership Program
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:
Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Racine County and is enrolled in the Partnership Program.

2. Petitioner's diagnoses include COPD, asthma, morbid obesity, chronic pain, bilateral knee pain, peripheral edema, depression, anxiety, obesity hypoventilation syndrome, agoraphobia with panic attacks, and diabetes.

3. Petitioner received a hospital bed prior to her enrollment in the Partnership Program in October 2014.

4. On or about February 11, 2015 petitioner requested that the Partnership Managed Care Organization (MCO) provide her with a new hospital bed.

5. On February 17, 2015 an Interdisciplinary Team (IDT) performed an assessment in petitioner's home to determine if a new hospital bed was approvable. The IDT determined that a new hospital bed was not shown to be medically necessary and did not support her outcomes. See Exhibits 1 and 2.

6. On March 2, 2015 the Partnership Program mailed a notice to petitioner stating that it was denying her request for a new hospital bed because the service was not an effective way of supporting her outcomes, her outcomes were supported in another way by having a paid family caregiver assist her with getting in and out of bed, and she did not meet Medicare guidelines for a new hospital bed. See Exhibit 3.

7. After petitioner received the denial, she requested that the Partnership Program repair her current hospital bed. On March 11, 2015 the Partnership Program mailed a notice to petitioner stating that it was denying her request for repairs to her hospital bed because her outcomes were supported in another way, she did not meet Medicare guidelines for a new hospital bed, and the service did not meet medical necessity. See Exhibit 4.

DISCUSSION

The Wisconsin Partnership program is a comprehensive waiver program integrating health and long term support services for people who are elderly or disabled. Services are delivered in the participant's home or a setting of his or her choice. Through team based care management, the participant, his or her physician, nurses and social workers together develop a care plan and coordinate all service delivery. See MA Eligibility Handbook, §38.3, available online at http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm. A member-centered plan (MCP) is created to help members move toward the outcomes that are identified in the assessment process.

To participate in the Partnership program, people must be eligible for MA and meet the MA nursing home level of care requirement. Partnership MCOs enter into a MA managed care contract with the Department of Health Services (DHS) and a Medicare managed care contract with the federal Centers for Medicare and Medicaid Services (CMS). Community Care is the MCO for petitioner.

According to the Program's "Being a Full Partner" booklet, found online at http://www.dhs.wisconsin.gov/ltcare/BeingAFullPartner.htm#toc06, the MCO is responsible for helping the member to achieve her personal outcomes, but also has to consider cost when deciding what services to provide. Most MCOs do this through the Resource Allocation Decision (RAD) process. The MCP should be both reasonable and effective. The member does not have to settle for a MCP that does not help her reach her outcomes, or that gets in the way of an outcome. However, an MCO may choose to provide a service in a less expensive way if the MCP is still effective in helping the member meet her individual outcome.

The MCO has a responsibility to determine the necessity and appropriateness of a requested service to meet the member's needs. See, *2015 Family Care Programs Contract* (*Contract*), Article V, §K, Article VII & Addendum XII-C, available online at http://mltc.wisconsin.gov/2015/. Community Care performed that function in this case.

Community Care determined that she did not meet the Medicare guidelines for the requested bed. Although those guidelines were not supplied at hearing, a cursory search on the CMS website provides the following:

> **A. General Requirements for Coverage of Hospital Beds**
> A physician's prescription and such additional documentation as the Medicare Administrative Contractor (MAC) medical staff may consider necessary, including medical records and physicians' reports, must establish the medical necessity for a hospital bed due to one of the following reasons:
> - The patient's condition requires positioning of the body; e.g., to alleviate pain, promote good body alignment, prevent contractures, avoid respiratory infections, in ways not feasible in an ordinary bed; or
> - The patient's condition requires special attachments that cannot be fixed and used on an ordinary bed.
>
> **B. Physician's Prescription**
> The physician's prescription, which must accompany the initial claim, and supplementing documentation when required, must establish that a hospital bed is medically necessary.
> If the stated reason for the need for a hospital bed is the patient's condition requires positioning, the prescription or other documentation must describe the medical condition, e.g., cardiac disease, chronic obstructive pulmonary disease, quadriplegia or paraplegia, and also the severity and frequency of the symptoms of the condition that necessitates a hospital bed for positioning.
> If the stated reason for requiring a hospital bed is the patient's condition requires special attachments, the prescription must describe the patient's condition and specify the attachments that require a hospital bed.

See http://www.cms.gov/medicare-coverage-database/details/ncd-details.aspx?NCDId=227&ncdver=1&bc=AAAAQAAAAAAA&&_sm_au_=iVVtDwTQtNJ3D6DH.

Petitioner provided a letter from her doctor which states in part that "[redacted] has several health concerns including chronic pain, morbid obesity, and the most debilitating for her are her mental health issues. [redacted] is not able to breathe adequately while laying flat in bed. It is imperative that the hospital bed be replaced in her home. Replacing the broken bed with a new hospital bed would allow [redacted] to sleep well at night and good sleep is essential to help break the negative cycle of her current mental health symptoms." See Exhibit 5.

It is unclear from this letter however, which of her diagnoses warrants the new bed. It is also unclear as to how elevating her head would provide her with the best medical service when she testified that she only lies on her left side (promoting good body alignment? Alignment for better breathing?). The IDT notes that at every visit petitioner was not lying in a head-elevated position. The record is unclear as to whether or not her other breathing therapies (oxygen and past use of CPAP) are sufficiently meeting those needs. Petitioner testified that she stopped using her CPAP after she received the hospital bed she has because with the elevation of her head, the CPAP was no longer necessary. It is unclear if that was cleared by her physician. The letter also does not address whether other options would be sufficient for elevation (wedges or pillows). Further it does not state to what degree elevation should occur to allow her to breathe adequately. In sum, I cannot find that this letter provides enough information to find the bed as meeting the guidelines or that is shows it as medically necessary.

To that latter point, medically necessary is defined in the Wisconsin Administrative Code as:

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:
(a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
(b) Meets the following standards:
1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code §DHS 101.03(96m).

Petitioner requests the bed so that she can reduce her pain, reposition herself, and assist with her breathing. However, as the IDT points out, she has a paid family caregiver there to assist her with repositioning and transfers. Thus, she has the assistance she needs for those issues. If, as she reported at hearing but did not report to her IDT, that she is having issues with nearly falling when she is transferring out of bed, she should be reassessed for her supportive home care/personal care needs. Moreover, I must agree with the IDT that it does not appear that the requested bed would meet her stated outcomes of getting out of bed to cook, do crafts, feel like a mom again, and to get out of the house. She wishes to use the requested bed as a lift chair of sorts so that she can transfer easier from bed to commode. However, I do not know that the specifications for a bed like would support a use such as this. Further, the recommendations from the IDT were to increase petitioner's movements in bed and getting out of bed so that she can increase her strength and endurance by assisting her caregiver in the transfer process, with the hopes that she would increase to a point where she would be able to access and use her wheelchair and walker instead of feeling confined to her bed.

Based on the foregoing, I cannot conclude that requested hospital bed is either a medical necessity for the petitioner, or necessary to support her long-term care outcome goals. The MCO's denials are sustained.

The petitioner may wish to provide this decision to her physician to identify the problems associated with her request and to develop better documentation should they determine that the request be made again. None of this is meant to diminish the challenges petitioner faces, but rather to explain that the evidence is not there to support the request.

CONCLUSIONS OF LAW

The Partnership Program correctly denied petitioner's request for a new hospital bed and for repairs to her current hospital bed.

THEREFORE, it is **ORDERED**

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 27th day of July, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 27, 2015.

Community Care Inc.
Office of Family Care Expansion